

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

vs.

DONALD G. JACKMAN

Defendant.

Crim. No. 00-72

(Civ. No. 04-1098)

MEMORANDUM ORDER

Petitioner Donald G. Jackman, Jr. has a pending Motion to Vacate under 28 U.S.C. 2255 filed at Criminal No. 00-72 (Doc. 140), and assigned Civil Action No. 04-1098.

Presently before the Court are Mr. Jackman's Renewed Motion for Bond (Doc. 4); Motion for Summary Judgment (Doc. 3), and Motion for Production of Audiotapes (Docs. 1 & 2), filed at Civil No. 04-1098; as well as Mr. Jackman's Motion for Leave to File for Discovery (Doc. 151), Motion to Compel Discovery (Doc. 152), Motion for Judicial Review of Freedom of Information Act (FOIA) Denial (Doc. 153), and Motion for Judicial Review (Doc. 154), filed at Cr. No. 00-72. For the reasons stated below we will deny these motions.

Renewed Motion for Bond

Mr. Jackman was first ordered detained in his underlying criminal action in March, 2000, following a detention hearing. (Docs. 8, 9, & 10) Mr. Jackman filed a Motion to be Admitted to Bail (Doc. 52), dated November 16, 2001. The Court orally denied that motion after a hearing on January 9, 2002. (Doc. 63)

On February 14, 2002, a jury found Donald Jackman guilty of possession of an unregistered firearm, in violation of 26 U.S.C. §§ 5661(d) and 5871. Following the jury verdict, Mr. Jackman pled guilty to possession of firearms by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(e) on February 15, 2002. On September 17, 2002, Mr. Jackman was sentenced to 120 months' imprisonment for the possession of an unregistered firearm charge, and 262 months'

imprisonment for the possession of firearms by a convicted felon charge, to be served concurrently for a total term of imprisonment of 262 months. He timely filed an appeal from his conviction on September 26, 2002. The Court of Appeals for the Third Circuit affirmed the conviction and sentence on October 6, 2003.

In his present motion for Bond, Mr. Jackman contends that he should be released on bond because he is actually innocent, that no crime was committed, and that there was no victim. In part Mr. Jackman raises arguments presented in his 2255 motion. Those arguments have yet to be determined by the Court. Merely presenting arguments is an insufficient basis for granting bond in this case.

He also argues on the basis of 8 U.S.C. § 1481, that it was never established that any act of expatriation was committed by him, and therefore he never actually lost his citizenship. Title 8 concerns Aliens and Nationality, and section 1481 concerns the loss of nationality by a native-born or naturalized citizen. Section 1481 of Title 8 is irrelevant to the instant matter. Mr. Jackman presents a fuller version of this argument in his Supplemental Memorandum of Law filed in support of his 2255 motion. Mr. Jackman is referring to his claim presented before trial, on appeal, and in his 2255 motion that at the time he was arrested he had all of his rights of citizenship and thus he was legally entitled to possess firearms. He argues in part that there are irreconcilable differences between aspects of the criminal statute in 18 U.S.C. § 921 and 8 U.S.C. § 1481. No matter how one approaches the question of whether Mr. Jackman had the right to possess firearms contrary to his conviction for possession of firearms by a convicted felon in violation of 18 U.S.C. §§ 922(g)(1) and 924(e), Title 8 of the United States Code is not implicated. Accordingly, we will deny Mr. Jackman's motion for bond.

Motion for Summary Judgment

In his motion for summary judgment Mr. Jackman seeks judgment in his favor arguing, in part, that over a year has passed in this matter without any adjudication or explanation as to why the matter has not been heard. He also refers generally to the issues raised in his 2255 motion and

contends in a supporting affidavit that the government cannot put forth any evidence to counter his motion for summary judgment. Of course, the government has filed a response to Mr. Jackman's arguments presented in his 2255 motion. Mr. Jackman filed a reply to the government's response in October, 2004, and his supplemental brief in support of his motion was filed on December 2, 2004. Thus, while more than a year has passed since the original 2255 motion was filed, it was not ready for review until December, 2004. In addition, as late as May 10, 2005, Mr. Jackman filed a motion seeking discovery materials that he contends are necessary for a fair and just adjudication of his pending 2255 motion. Mr. Jackman's motion will be decided on the merits, we find no reason to grant summary judgment in favor of Mr. Jackman and will deny his motion.

Discovery Motions

Mr. Jackman has filed a Motion for Production of Audiotapes, Motion for Leave to File for Discovery, and a Motion to Compel Discovery. He has also filed a Motion for Judicial Review of Freedom of Information Act (FOIA) Denial, and a Motion for Judicial Review that also concerns his FOIA request. All of the above motions concern Mr. Jackman's endeavor to gather a variety of materials. Our review of his motions reveals no basis for granting his motions. With respect to his motion for audiotapes of court proceedings we note that the court did not audiotape any of the proceedings in this matter, and is not aware of the existence of any audio tape of the proceedings. Accordingly, we will deny Mr. Jackman's motions.

AND NOW, to-wit, this 18th day of October, 2005, IT IS HEREBY ORDERED, ADJUDGED, and DECREED as follows:

1. Petitioner's Renewed Motion for Bond (Doc. 4 at Civ. No. 04-1098) be and hereby is DENIED;
2. Motion for Summary Judgment (Doc. 3 at Civ. No. 04-1098) be and hereby is DENIED;
3. Motion for Production of Audiotapes (Docs. 1 & 2 at Civ. No. 04-1098) be and hereby are DENIED;

4. Motion for Leave to File for Discovery (Doc. 151 at Cr. No. 00-72) be and hereby is DENIED;

5. Motion to Compel Discovery (Doc. 152 at Cr. No. 00-72) be and hereby is DENIED;
and

6. Motion for Judicial Review of Freedom of Information Act (FOIA) Denial (Doc. 153 at Cr. No. 00-72) be and hereby is DENIED.


Maurice B. Cohill, Jr.
Senior United States District Judge

cc: Counsel of record

Donald G. Jackman, Jr.
No. 06804068
FCI- McKean
P.O. BOX 8000
Bradford, PA 16701